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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

NO. 576

MRS. MILDRED G. TANNER,

Petitioner,

vs.

PAUL R. ERVIN, Executor of the Estate of ERNEST M. TANNER,

Respondent.

Petition for Writ of Certiorari to the Supreme Court of North Carolina

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MRS. MILDRED G. TANNER,

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Respondent.

Petition for Writ of Certiorari to the Supreme Court of North Carolina

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The Petitioner respectfully prays for a writ of certiorari to be issued to the Supreme Court of North Carolina, to the end that this Court may review a judgment which the said Supreme Court of North Carolina has rendered in the above entitled case.

OPINIONS OF THE COURT BELOW

The majority and dissenting opinions of the Supreme Court of North Carolina are reported in 250 NC 602 and 109 S.E. 2d 460 and are appended hereto as Appendix A.

JURISDICTION

The judgment of the Supreme Court of North Carolina was filed on 2 July 1959.

The Petition for Rehearing by the Supreme Court of North Carolina was filed 10 August 1959 and the Order denying the petition for Rehearing is dated and was filed 17 September 1959.

Jurisdiction in this Court to review the judgment of the Supreme Court of North Carolina through the issuance of writ of certiorari is established by the provisions of 28 U. S. C. 1257 (3).

QUESTIONS PRESENTED

1. In deciding a controversy between a surviving co-owner of United States Series E Savings Bonds and the Executor of the deceased co-owner, who claims by virtue of an agreement made by the decedent and the survivor, did the North Carolina Supreme Court err in holding that the purpose of the Treasury Regulations incorporated in the bond contract being to protect and hold the Federal Government immune from attack, the survivorship provision in the bond contract applies only in determining legal title and is inapplicable and without force or effect in determining the beneficial ownership of the bond proceeds?

2. Where husband and wife, co-owners of United States Savings Bonds, enter into an *inter vivos* agreement by which the bonds are made the sole property of the husband, is the survivorship provision of the bond contract thereby made inoperative so that upon the death of the husband the bond proceeds are distributed according to state law governing the devolution of personal property rather than to the surviving

co-owner in accordance with the provisions of the bond contract and Treasury Regulations?

STATUTE INVOLVED

31 U.S.C. 757c. (a):

United States savings bonds and Treasury savings certificates—Authority to issue; use of proceeds

(a) The Secretary of the Treasury, with the approval of the President, is authorized to issue, from time to time, through the Postal Service or otherwise, United States savings bonds and United States Treasury savings certificates, the proceeds of which shall be available to meet any public expenditures authorized by law, and to retire any outstanding obligations of the United States bearing interest or issued on a discount basis. The various issues and series of the savings bonds and the savings certificates shall be in such forms, shall be offered in such amounts, subject to the limitation imposed by section 757b of this title, and shall be issued in such manner and subject to such terms and conditions consistent with subsections (b)-(d) of this section and including any restrictions on their transfer, as the Secretary of the Treasury may from time to time prescribe.

TREASURY REGULATION INVOLVED

TREASURY REGULATION DIRECTLY INVOLVED IN THIS CONTROVERSY IS THE FOLLOWING PORTION OF SUBPART L, SECTION 315.45 (c) OF UNITED STATES TREASURY DEPARTMENT REGULATIONS GOVERNING UNITED STATES SAVINGS BONDS, DEPARTMENT CIRCULAR NO. 530, 7TH REVISION, MAY 31, 1952:

"(c) Payment or reissue after the death of one co-owner.—If either co-owner dies without having presented and surrendered the bond for payment or authorized reissue, the surviving co-owner will be recognized as the sole and absolute owner of the bond and payment or reissue will be made only to such survivor, as though the bond were registered in his name alone." (R. 25)

Additional provisions of said Regulations relative to the controversy and set forth in Appendix D of this petition are as follows:

Subpart B, Section 315.4, page 1.
Subpart D, Sections 315.11, 315.12 and 315.13, page 5.
Subpart L, Section 315.45, page 14.

STATEMENT OF THE CASE

Mrs. Tanner, the Petitioner, and her husband, the decedent of the Respondent Executor, with jointly earned and owned funds purchased the United States Savings Bonds, Series E, face value $16,000, the subject of this controversy, and had them issued in their names as co-owners. Thereafter, the Tanners executed a separation agreement by which they divided their jointly owned property and agreed to live separate and apart (R. 16, 17). In the separation agreement, the bonds in question were dealt with in the following language:

> "6. It is agreed between both parties hereto that the remaining assets which are jointly held by the parties hereto and shall consist of the savings account at American Trust Company in the sum of $22,467.00 and the United States Savings Bonds having a present value of $17,323.00 and two checking accounts at the American Trust Company and the Union National Bank of Charlotte totalling $24,367.45 shall become and are hereby made the sole property of the party of the first part (Mr. Tanner)." (R. 10 para 6)

The parties actually separated and took into their respective possessions the property as assigned in the separation agreement. Approximately five months after the separation, Mr. Tanner died with the bonds in his possession without having cashed them or changed the form of registration. He left a will making a daughter by a former marriage his sole beneficiary. (R. 16, 17)

The Petitioner brought suit in the Superior Court of North Carolina against Mr. Tanner's Executor for possession of the bonds, alleging the bonds constituted a contract between the United States Government and the designated co-owners of the bonds by the terms of which the Government under-

took to pay the amount specified in the bonds in accordance with the terms of the bonds and the Treasury Regulations pursuant to which the bonds were issued and that as surviving co-owner the Petitioner in accordance with said Regulations was the owner of the bonds and entitled to the possession of them. (R. 2)

In his answer, the Executor alleged that by reason of the separation agreement the bonds became the sole property of Mr. Tanner, were part of his estate, and passed under the terms of his will, and if this were not the case Mrs. Tanner was estopped from claiming ownership of the bonds by having accepted and taken possession of the property transferred to her by the separation agreement. (R. 7)

By way of reply, the Petitioner, Mrs. Tanner, alleged that she and her husband had continued to associate with one another with mutual affection and respect, that her husband was aware that the bonds were issued in their joint names and in the event of his death would be payable only to her and that he intended that she should receive the bonds. (R. 14)

In the trial court, Mrs. Tanner offered evidence tending to prove that her husband intended for her to have the bonds in the event of his death and purposely refrained from cashing them or having them reissued in some other form. This evidence was excluded by the trial court as being irrevelant and immaterial. (R. 26)

In her complaint, in the trial court, the Petitioner raised the Federal questions sought to be reviewed in the following paragraphs of her complaint:

> "5. All of the said bonds are issued in the joint names of Ernest M. Tanner and the plaintiff as co-owners.

6. All of said bonds have upon the face of each proper references to the Circulars and Treasury Regulations under which they are issued, which Regulations by references are made a part of the bond.

7. Each of said bonds constitutes a contract between the United States Government and the named owners of the bond by the terms of which the United States Government agrees and undertakes to pay the amounts specified in the bond in accordance with the terms of the bond and the Circulars and Treasury Regulations under which the bond was issued and which are made a part of the bond and contract by reference.

8. At the times all of said bonds were issued, the Treasury Regulations made provision for payment of the bonds after the death of one co-owner, as follows: "If either co-owner dies without having presented and surrendered the bond for payment or authorized reissue, the surviving co-owner will be recognized as the sole and absolute owner of the bond and payment or reissue will be made only to such survivor, as though the bond were registered in his name alone."

9. By reference, the provision of the Treasury Regulations quoted in the above paragraph is made a part of the contract of each of the bonds listed on Exhibit A.

10. The provision of the Treasury Regulations above quoted is the provision designed to provide for and control the ownership of the bonds, in case one co-owner dies leaving the other co-owner surviving.

11. Except as herein set forth and referred to, the terms and provisions of the bonds and the Circulars and Treasury Regulations under which the bonds are issued are not relevant to the matters in controversy.

12. Ownership of the bonds listed on Exhibit A is controlled by the provision quoted in paragraph 8 above, and by the terms of said provision the plaintiff as surviving named co-owner is the sole owner of said bonds and entitled to the payment of same." (R. 2, 3, 4)

In his answer, the Executor admitted as true paragraphs 5, 6, 8 and 9 of the complaint. (R. 5)

With respect to the Petitioner's allegations relative to the Federal questions, the trial court made the following findings:

"5. All of said bonds were worded in the form set forth as Exhibit B or in the form set forth as Exhibit C attached to the Stipulation.

6. Treasury Department Circular No. 653 referred to in said bonds in its turn refers to Treasury Department Circular No. 530 containing the pertinent regulations issued by the Treasury Department. A copy of all pertinent provisions of said Circular No. 530 are set forth on Exhibit D attached to said Stipulation." (R. 33)

Exhibits B, C and D referred to in the above quoted findings of fact of the trial court are appended as Appendices B, C and D of this petition.

The trial court found as a matter of law that irrespective of the separation agreement the Petitioner was the owner of the bonds and entitled to the possesion of them, entered judgment to this effect and ordered the Executor to deliver the bonds to Mrs. Tanner. (R. 34)

The Executor excepted to the conclusion of law of the trial court and the entry of the judgment by it and appealed to the Supreme Court of North Carolina. (R. 34)

The Supreme Court of North Carolina reversed the judgment of the trial court and remanded the case with instructions to the trial court to enter judgment requiring Mrs. Tanner to cash the bonds and deliver the proceeds to the Executor. The conclusion reached by the North Carolina Supreme Court in its ruling with respect to the Federal questions sought to be reviewed is set forth in the following quotation from the majority opinion of the Court:

> "According to the federal statutes and Treasury Regulations under which the Savings Bonds in suit were issued, Mrs. Mildred G. Tanner, the surviving co-owner, is the sole legal owner of these Savings Bonds, and no State Court can compel the Treasurer of the United States to pay them to anyone else or to recognize anyone else's interest in them, except as expressly provided by the Treasury Regulations under which they were issued. When the Treasurer of the United States pays the proceeds of these bonds to Mrs. Tanner, the United States Government will have discharged its contractual obligations in respect to these bonds.
>
> However, Mrs. Mildred G. Tanner in a deed and separation agreement between her and her husband, Ernest M. Tanner, relinquished, quitclaimed and conveyed for a valuable consideration all of her right, title and interest in these Savings Bonds to her husband, Ernest M. Tanner. Mildred G. Tanner and Ernest M. Tanner accepted and took into their respective possession the property granted them by the deed and separation agreement. Ernest M. Tanner died about five months later with these bonds payable to "Mr. Ernest M. Tanner or Mrs. Mildred M. (sic) Tanner" in his possession. Upon such facts, the estate of Ernest M. Tanner is equitably entitled to the proceeds of these bonds. The

United States Government is in no sense a party to this litigation, and can have no interest in its result. As clearly stated by the authorities we have quoted above, the federal statutes and Treasury Regulations under which these bonds were issued do not apply to the rights of the estate of Ernest M. Tanner, which is the equitable owner of the proceeds of these bonds, when the proceeds of these bonds are paid by the Treasurer of the United States to Mrs. Mildred G. Tanner, and do not prevent this Court from declaring a resulting trust in the proceeds of the bonds in the hands of Mrs. Mildred G. Tanner, when she cashes them, for the benefit of the estate of Ernest M. Tanner." (250 N.C. at page 612, 109 S.E. 2d at page 467, Appendix A, page 34)

In due time, on 10 August 1959 Petition to Rehear was filed by Mrs. Tanner, the Petitioner here, in the Supreme Court of North Carolina, and 17 September 1959 the Petition to Rehear was denied by the Supreme Court of North Carolina.

REASONS FOR ALLOWANCE OF WRIT

In this case the Supreme Court of North Carolina, the highest court of the State, has by a bare majority of four to three decided a Federal question of substance not heretofore decided by this Court. The North Carolina Court has placed an interpretation upon the Treasury Regulations incorporated in United States Savings Bond contracts which, if allowed to stand, will cast doubt upon the good faith of the government's commitments and adversely affect the marketability of its bonds and the confidence with which citizens have invested in these obligations of their government.

The Purpose of the Treasury Regulations. The Treasury Regulations evidence an intention to create a special sort

of property designed to accomplish particular purposes. Savings Bonds are made non-transferable to keep the Government's obligations spread among its citizens, to prevent their concentration in the hands of money lenders and to encourage thrift. A survivorship provision, which the North Carolina Court, in the case of Ervin vs. Conn hereinafter quoted, called the "most attractive feature" of the bonds is included in co-ownership bonds. In plain unequivocal language the Regulations state that upon the death of either designated co-owner, ". . . the surviving co-owner will be recognized as the sole and absolute owner of the bond and payment or reissue will be made only to such survivor as though the bond were registered in his name alone." Here is a simple, easy means by which an investor may provide for the distribution of property in the event of his death. The promise is held out to the bond buyer that at his death at least this portion of his estate will be paid over directly to the person he has chosen to have it, free of creditors' claims and free of the delay, uncertainties and expense which unfortunately so often attend the administration of estates.

Life insurance policies and co-ownership Savings Bonds are designed to serve the needs of a person seeking to provide for the eventuality of his death and at the same time retain control of the property during life. And also, as in the case of life insurance policies, a distinguishing feature of such Bonds is that upon death ownership does not pass by the state laws governing the devolution of personal property but in accordance with the bond contract. Upon the death of the co-owner, the survivor's rights are not dependent upon what rights the deceased may have had in the bond. The survivor doesn't take through the decedent or his estate, but like the beneficiary of an insurance policy he takes in his own right as a party to the contract.

This view of the purpose and effect of the Treasury Regulations and the bond contract is supported by an unanimous opinion of the North Carolina Court in an earlier case, Ervin vs. Conn, 225 N. C. 267, 34 S. E. 2d 402. At pages 272 and 275 of the official report and at pages 405 and 407 of the Southeastern Reports, the Court said:

> "There is no doubt that the survivorship feature in the form of investment offered by these bonds has been, and is, peculiarly attractive to millions of purchasers throughout the nation, and has been strongly influential in their widespread distribution. A recent statement from Washington estimates that at least eighty-five million persons in this country are holders of E type bonds. The security acquired by the simple act of purchase can hardly be overestimated as a factor in their sales and the satisfaction with which they continue to be held. $7,000,000,000 of the $14,000,000,000 bond offer now being made is expected to be bought by private individuals. To question their validity, or deprive them of their most attractive feature, would seriously embarrass the Government in its attempt to make good its promises, cripple its bond sales, and no doubt have a serious effect on the permanence of these individually small, but in the aggregate large, investments."

> "The suggestion of the appellants that the provisions, here considered as conferring the absolute right of ownership on the survivor, merely constitute the designated persons as agents to make the collection, or receive payment of the bonds, must be rejected. The character of the instruments, the circumstances under which they are issued and sold, as well as the phraseology employed with reference to the final payment, negative the suggestion. We are not prepared to assume that the

United States Government, after having given every assurance in the sale of the bonds, and more especially in their terms, which may readily be construed as conferring absolute ownership upon the surviving beneficiary or co-owner, would then, for its mere convenience, wash its hands of the transaction and further liability as to the proper application of the funds, by appointing, for the purpose of collection and payment only, a random person, without reference to his ability, in case of default, to respond to the real owner. Moreover, one clause in the regulations applicable to the whole question provides:

"Section 315.17: (a) *Judicial proceedings.*—The ownership of a savings bond or interest therein may be transferred or established through valid judicial proceedings: *Provided, however*, That no such proceedings will be recognized if they would give effect to an attempted voluntary transfer *inter vivos* of the bond or would defeat or impair the rights of survivorship conferred by these regulations upon co-owners and beneficiaries."

The North Carolina Court Errs in its Interpretation of the Treasury Regulations. In the present case, the majority of the North Carolina Court have taken a view of the Treasury Regulations opposite to the one expressed by the same Court in the earlier Ervin case quoted above. In the Ervin case, the Court expressly rejected the suggestion that the survivorship provisions ". . . here considered as conferring the absolute right of ownership on the survivor, merely constitute the designated persons as agents to make the collection or receive payment of the bonds. . ." The Court refused to construe the survivorship feature as a device whose purpose is to protect the Government, saying:

> "We are not prepared to assume that the United States Government, after having given every assurance in the sale of the bonds, and more especially in their terms, which may readily be construed as conferring absolute ownership upon the surviving beneficiary or co-owner, would then, for its mere convenience, wash its hands of the transaction and further liability as to the proper application of the funds, by appointing, for the purpose of collection and payment only, a random person, without reference to his ability, in case of default, to respond to the real owner."

Now the majority of the Court adopts the rejected view, which is set forth in the opinion in the quotation from the case of Katz vs. Driscoll, 86 Cal. app. 2nd 313, 194 P. 2nd 822, as follows:

> "The purpose of the Treasury Regulations is to protect and hold the Federal Government immune from any attack on its performance of the contract as made in the bond." (Appendix A; page 33).

Neither the North Carolina Court, nor the authorities it cites, give any reason for so limiting the purpose of the Treasury Regulations. It is an arbitrary and, we submit, groundless assumption and contrary to the plain words of the Regulations.

The North Carolina Court expresses its conclusions as follows:

> "According to the federal statutes and Treasury Regulations under which the Savings Bonds in suit were issued, Mrs. Mildred G. Tanner, the surviving co-owner, is the sole legal owner of these Savings Bonds, and no State Court can compel the Treasurer of the United States to

pay them to anyone else or to recognize anyone else's interest in them, except as expressly provided by the Treasury Regulations under which they were issued. When the Treasurer of the United States pays the proceeds of these bonds to Mrs. Tanner, the United States Government will have discharged its contractual obligations in respect to these bonds.

However, Mrs. Mildred G. Tanner in a deed and separation agreement between her and her husband, Ernest M. Tanner, relinquished, quitclaimed and conveyed for a valuable consideration all of her right, title and interest in these Savings Bonds to her husband, Ernest M. Tanner. Mildred G. Tanner and Ernest M. Tanner accepted and took into their respective possession the property granted them by the deed and separation agreement. Ernest M. Tanner died about five months later with these bonds payable to "Mr. Ernest M. Tanner or Mrs. Mildred M. (sic) Tanner" in his possession. Upon such facts, the estate of Ernest M. Tanner is equitably entitled to the proceeds of these bonds. The United States Government is in no sense a party to this litigation, and can have no interest in its result. As clearly stated by the authorities we have quoted above, the federal statutes and Treasury Regulations under which these bonds were issued do not apply to the rights of the estate of Ernest M. Tanner, which is the equitable owner of the proceeds of these bonds, when the proceeds of these bonds are paid by the Treasurer of the United States to Mrs. Mildred G. Tanner, and do not prevent this Court from declaring a resulting trust in the proceeds of the bonds in the hands of Mrs. Mildred G. Tanner, when she cashes them, for the benefit of the estate of Ernest M. Tanner." (Appendix A, page 34)

In the first paragraph above quoted, the Court refers to Mrs. Tanner, the surviving co-owner of the bonds, as the "sole legal owner." The Court might more accurately have termed the surviving co-owner the "agent for collection" because under the Court's interpretation of the Treasury Regulations the only right secured to the survivor by the survivorship feature of the bonds is the right to make the collection.

After referring only to the separation agreement and the fact that the parties took possession of the properties assigned them and Mr. Tanner died with the bonds in his possession payable to "Mr. Ernest M. Tanner, or Mrs. Mildred M. (sic) Tanner", the Court says: "Upon such facts, the estate of Ernest M. Tanner is equitably entitled to the proceeds of these bonds." The separation agreement provides that the bonds are made the sole property of Mr. Tanner. There is no question about Mr. Tanner's ownership of the bonds. Legally and equitably he was entitled to them, but it should be noted that the separation agreement simply makes Mr. Tanner the owner of the bonds as they were. The survivorship feature continued as an integral part of the bond contract and there is nothing in the separation agreement to indicate that the parties intended or even desired to amend or limit it. On the contrary, the fair inference arising from a consideration of the bond contract and the separation agreement is that Mr. and Mrs. Tanner believed and intended that in the event of Mr. Tanner's death, Mrs. Tanner would become the owner of the bonds. The error of the North Carolina Court is that it reasons that because Mr. Tanner was the owner, his rights in the bonds pass to his estate by the state laws governing devolution of personal property. This is the result of the Court's interpretation of the survivorship feature as a protective device to shield the Govern-

ment rather than a good faith commitment binding upon the Government and the parties to the bond contract whereby it is agreed that in the event of the death of a co-owner the survivor shall become the sole owner by virtue of the bond contract and without reference to the state laws governing the devolution of personal property.

The North Carolina Court states:

> "As clearly stated by the authorities we have quoted above, the federal statutes and Treasury Regulations, under which these bonds were issued, do not apply to the rights of the estate of Ernest M. Tanner, which is the equitable owner of the proceeds of these bonds, when the proceeds of these bonds are paid by the Treasurer of the United States to Mrs. Mildred G. Tanner. . ."

This Petitioner respectfully submits that here the Court manifests an erroneous interpretation of the Treasury Regulations. Whatever rights the estate may have in these bonds it must take by way of succession to the rights which Mr. Tanner had. If the survivorship provision is given full force and effect, and not restricted to the function of a protective device, then the rights Mr. Tanner had terminate with his death and the surviving co-owner takes in accordance with the terms of the survivorship provision.

The North Carolina Court cites the case of In Re Hendricksen's Estate, Rohn vs. Kelley, 156 Neb. 463, 56 N. W. 2d 711, certiorari denied, Rohn vs. Kelley, 346 U. S. 854, 98 L. Ed. 368. In this case, mother and daughter were designated co-owners of United States Savings Bonds. The daughter for a valuable consideration executed an agreement stating that she had no interest in the bonds and that she would have only such interest in the bonds as might be given her under her mother's will. The Court required the daughter

to deliver the proceeds of the bonds she had cashed to the mother's executor. This Petitioner takes no issue with the result reached in the Hendricksen case. There the decedent had an agreement with the survivor that the survivor would claim only such portion of the bonds as might be given her in the decedent's will. The rights in this agreement passed to the executor and justify the judgment requiring the survivor to pay over the bond proceeds. In the Tanner case, there is no such agreement, and there are no rights accruing as the result of fraud or inequitable conduct passing to the executor upon which may be grounded an action to deprive Mrs. Tanner of the bonds to which she admittedly had title. The North Carolina Court does not suggest that in the separation agreement there was any attempt to limit or amend the survivorship provision. In the view the North Carolina Court takes of the bond contract and Treasury Regulations, this isn't necessary. Viewing the survivorship provision as a protective device, the Court applies it only in determining the person entitled to make collection. Then in determining the beneficial owner, the Court lays aside the federal statutes and Treasury Regulations as being inapplicable to the rights of the individual parties, and adjudicates the person entitled to the bond proceeds in accordance with the state laws governing the devolution of personal property in the same manner as if there were no survivorship provision in the bond contract.

Summary. In this case, the dilution of the force and effect of the federal statutes and Treasury Regulations relative to United States Savings Bonds by state courts reaches a peak. Here, in the absence of even a suggestion of fraud or inequitable conduct, the North Carolina Court nullifies the survivorship provision and orders the disposition of bond proceeds in accordance with the state law governing the

devolution of personal property. By this decision, the rights of a surviving co-owner are reduced to the worthless right to make the collection of the bond proceeds and pay them over to the estate, and the survivorship provision of United States Savings Bonds that was intended to be their "most attractive feature" becomes an unworthy escape device of the Government and a promising source of litigation by the estates of bond holders. The Petitioner respectfully submits this erroneous interpretation of the Treasury Regulations and particularly the survivorship provision of United States Savings Bonds should be corrected by this Court.

CONCLUSION

For the reasons and upon the grounds herein set forth, the Petitioner prays that a writ of certiorari be granted.

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APPENDIX A

SUPREME COURT OF NORTH CAROLINA

SPRING TERM 1959

MRS. MILDRED G. TANNER

v. No. 245—Mecklenburg

PAUL R. ERVIN, Executor of the Estate of ERNEST M. TANNER.

Appeal by defendant from Sharp, S. J., 5 January 1959, Special Civil Term of Mecklenburg.

Civil action to determine who is entitled to the proceeds of certain U. S. Government Bonds, Series E.

Pursuant to G. S. 1-184, the parties waived a jury trial.

This is a summary of the crucial findings of fact made by the Judge: Mrs. Mildred G. Tanner, the plaintiff, and Ernest M. Tanner, defendant's testate, intermarried on 4 July 1930, and lived together as husband and wife until 9 October 1956. While living together as husband and wife they purchased during the years 1942, 1943, 1944 and 1945 with money owned and jointly earned by them $16,000.00 at maturity value of U. S. Government Bonds, Series E. All these bonds were issued payable to "Mr. Ernest M. Tanner or Mrs. Mildred M. (sic) Tanner."

On 9 October 1956 Ernest M. Tanner and Mildred G. Tanner executed a deed and separation agreement, which conforms with the requirements of G. S. 52-12 as to contracts of wife and husband affecting corpus or income of estate. The instrument has these recitals: No children were born of the marriage. The parties are engaged in the operation of two Orange Drink Stores in Charlotte, and own a home in Charlotte, certain U. S. Government Bonds, and certain funds

deposited to their joint account in one or more banks in Charlotte. In this instrument the parties in consideration of mutual covenants and agreements therein contained covenanted and agreed as follows—we summarize the material parts—: Henceforth, the parties shall live separate and apart. In full, final and complete settlement of all interest which Mildred G. Tanner has in any property real or personal owned by them, and in full settlement of any claim Mildred G. Tanner may have against Ernest M. Tanner for support, Ernest M. Tanner conveys to Mildred G. Tanner all of his right, title and interest to the two Orange Drink Stores in Charlotte, including name, goodwill, inventory on hand and fixtures, to be hers absolutely, and Ernest M. Tanner likewise conveys to Mildred G. Tanner all right, title and interest to their home in Charlotte, including all furniture and personal "effects" therein. Since the home was owned by them by the entireties, it was agreed that the parties contemporaneously with the execution of the deed and separation agreement will join in a deed for the property to Edna Glick Andes as trustee for Mildred G. Tanner, who shall hold the title to the home in trust subject to the direction of Mildred G. Tanner.

Paragraph 6 of the instrument reads: "It is agreed between both parties hereto that the remaining assets which are jointly held by the parties hereto and shall consist of the savings account at American Trust Company in the sum of $22,467.00 and the United States Savings Bonds having a present value of $17,323.00 and two checking accounts at the American Trust Company and the Union National Bank of Charlotte totalling $24,367.45 shall become and are hereby made the sole property of the party of the first part."

Paragraph 7 reads: "It is the purpose of this agreement not only to enter into a separation agreement as between

husband and wife to fix and establish the property rights as between husband and wife. But also to effect a complete division of the jointly held properties and property interests of the party hereto."

Each party relinquishes, quitclaims and conveys to the other any right, title or interest which he or she may have by virtue of the marital relationship in any property now owned, or which may hereafter be acquired by the other. In addition, Mildred G. Tanner renounced her right to administer on the estate of Ernest M. Tanner in the event of his death, together with her right to inherit from him.

Mildred G. Tanner and Ernest M. Tanner accepted and took into their respective possession the property granted them by the deed and separation agreement. They did not live together thereafter.

Ernest M. Tanner died testate on 6 March 1957, after an illness of 52 days. His will dated 10 October 1956, the day after the execution of the deed and separation agreement, was duly probated in Mecklenburg County on 11 March 1957. Item II of the will refers to the separation agreement as the reason for making no provision for his wife Mildred G. Tanner. In Item III of his will he devised and bequeathed all of his property, real and personal, in fee simple to his daughter, Amber F. Isham, by a former marriage. In Item IV he named Paul R. Ervin, the defendant, as executor of his will.

Ernest M. Tanner at the time of his death had in his possession the $16,000.00 at maturity value of U. S. Government Bonds, Series E, above mentioned, and these bonds are now in possession of Paul R. Ervin, Executor. These bonds are the same bonds referred to in the deed and separation agreement.

Upon the facts found, the Judge concluded as a matter of law that plaintiff is the owner of these U. S. Government Bonds, Series E, and entitled to their immediate possession, and entered judgment accordingly.

From the judgment, defendant appeals.

DAVID J. CRAIG, JR. and GUY T. CARSWELL for Plaintiff, Appellee.

W. PINKNEY HERBERT, JR. and McDOUGLE, ERVIN, HORACK & SNEPP for Defendant, Appellant.

Parker, J. Defendant has two assignments of error; one to the Judge's conclusion of law, and the other to the judgment.

All these U. S. Savings Bonds contain proper references to the Acts of Congress and to the Circulars and Treasury Regulations under which they are issued, which Regulations are made a part of the bonds by reference.

In the case *sub judice* four of these bonds, each with a value at maturity of $1,000.00, were issued in February 1942, and four similar bonds were issued on December 1942. Two similar bonds were issued in July 1943, and one similar bond in September 1943. One similar bond was issued in July 1944, and another similar bond in December 1944. One similar bond was issued in June 1945, and two similar bonds in December 1945.

The Code of Federal Regulations, Cumulative Supplement, Book 6, 1944, Title 31, Chapter II, Part 315, Subpart K, 315.32, specifies the manner in which these bonds registered in the names of "Mr. Ernest M. Tanner or Mrs. Mildred M. (sic) Tanner" as co-owners during the year 1942 shall be paid. 315.32(a) provides payment will be made to either co-owner upon his individual request during the lifetime of both. 315.32(b) provides, "if either co-owner dies

without having presented and surrendered the bond for payment to a Federal Reserve Bank or the Treasury Department, the surviving co-owner will be recognized as the sole and absolute owner of the bond, and payment will be made only to him."

Identical provisions and Regulations apply to the two bonds issued in July 1943 and to the one bond issued in September 1943. Code of Federal Regulations, 1943 Supplement, Book 1, 1944, Title 31, Chapter II, Subchapter B, Part 315, Subpart K, 315.32(a) and (b).

Identical provisions and Regulations apply to the two bonds issued in 1944. Code of Federal Regulations, 1944 Supplement, Book 2, 1945, Title 31, Chapter II, Subchapter B, Part 315, Subpart K, 315.32(a) and (c).

Substantially identical provisions and Regulations apply to the three bonds issued in 1945. Code of Federal Regulations, 1945 Supplement, Book 3, 1946, Title 31, Chapter II, Subchapter B, Part 315, Subpart L, 315.45(a) and (c).

The rule followed by a majority of the Courts, including North Carolina, frequently called the "majority rule," with respect to rights in United States Savings Bonds registered under Treasury Regulations in the names of two individual co-owners in the alternative, is that, upon the death of one of the co-owners, the surviving co-owner is vested with the sole ownership in such bonds, at least in the absence of fraud or other inequitable conduct on the part of the survivor. Ervin v. Conn, 225 N. C. 267, 34 S. E. 2d 402; Watkins v. Shaw, Comr. of Revenue, 234 N. C. 96, 65 S. E. 2d 881; Hubbard v. Wiggins, 240 N. C. 197, 206, 81 S. E. 2d 630, 635-6; Annotation 37 A. L. R. 2d, Rights upon death of co-owners of United States Savings Bonds, II. Right of surviving co-owner generally, 3, Majority View, (a) Generally, pp. 1223-

1225, where many cases are cited. See also Jones v. Callahan, 242 N. C. 566, 89 S. E. 2d 111; Wright v. McMullan and Wright v. Wright, 249 N. C. 591, 107 S. E. 2d 98, where the terms of the bonds fix the legal title to the bonds as between the government and the purchaser of the bonds, but these are not cases where bonds were issued in the names of two individual co-owners in the alternative. There is a minority view, for which see the same A. L. R. annotation, 5, Minority View, pp. 1233-1236.

The principal basis for the majority view is that solution of the question as to the property rights of the surviving co-owner in a United States Savings Bond is one of contract, and that the Treasury Regulations having the force and effect of federal law, become a part of the bond as a contract between the purchaser and the federal government, and fix legal title to the bond, and are determinative of the property rights of the parties to the bond. Ervin v. Conn, *supra;* Annotation 37 A. L. R. 2d, 4, pp. 1229-1233, where many cases are cited.

"The contract between the United States and a purchaser of government bonds fixes legal title to the bonds for the purpose of protecting the government against suits involving title, but does not and should not affect other legal rights of third parties or change settled rules of law not necessary to effectuate its purpose." 91 C. J. S., United States, p. 318.

In the case of In re Hendricksen's Estate, Rohn v. Kelley, 156 Neb. 463, 56 N. W. 2d 711, certiorari denied Rohn v. Kelley, 346 U. S. 854, 98 L. Ed. 368, $10,000.00 Series G United States Savings Bonds were issued in the names of Mrs. Florence Hendricksen (mother) or Ethel Kelley (daughter) as co-owners. Ethel Kelley, the surviving co-owner had, during her mother's lifetime and for a valuable consideration, sold, assigned and transferred to her mother any interest she

may have or purport to have in these bonds. The instrument of assignment recites: "Ethel Kelley further states that she had no interest in these bonds at the time her name was placed thereon and agrees that she shall have only such interest in the bonds as may be given her under the will of Florence Hendricksen." The Court held that the executor of the mother's estate was entitled to the proceeds of the bonds to the exclusion of any interest in the surviving co-owner other than as provided in the will. In affirming the judgment below the Court said:

"From an examination of the cases cited by the defendant we are unable to find any case in which a conveyance by one co-owner of savings bonds to another was involved. For the most part the cases cited by the defendant refer to a situation where no positive act of the parties themselves, those who are co-owners of the bonds, intervenes between the time the bonds are issued and the time the dispute arises. The government would have no interest as to how the assets of Florence Hendricksen's estate would be distributed, or that by the last will of Florence Hendricksen, Ethel V. Kelley had no further rights in the estate so long as she retained the proceeds of the bonds. It seems clear that the federal laws and regulations are not intended to interfere with the positive act of two co-owners of bonds by which one conveys her interest in them to the other. In the instant case as shown by the evidence, Ethel V. Kelley assigned all her right, title and interest in the bonds to her mother during her mother's lifetime, and for a valuable consideration. The evidence also shows that she acknowledged that the proceeds of the bonds constituted part of the assets of her mother's estate, and her assignment of the bonds clearly indicates such to be true.

"The government's interest is a contractual one. Its obligation was to pay either of the co-owners the amount agreed

upon as shown by the bonds upon their proper presentation, in compliance with the federal laws. When the Treasurer of the United States satisfied the government's obligation by paying the proceeds of the bonds to Ethel V. Kelley, the government's interest in the matter ended. The government is in no sense a party to this litigation, and under the facts and circumstances could in no event have any interest in the result of this litigation.

"The court decreed that Ethel V. Kelley deliver the proceeds which she obtained from cashing the bonds to the executor in accordance with her assignment of the bonds for a consideration to her mother, whereby she agreed to take her share of the estate as provided for by her mother's will. There is nothing in this phase of the decree contrary to the laws of the United States or the regulations of the United States Treasury Department. Those laws and regulations do not prevent the declaration of a resulting trust in the proceeds of the bonds as shown under the facts in this case."

In District of Columbia v. Edith Bolling Wilson, 216 F. 2d 630, the decedent John Randolph Bolling was the brother of Mrs. Wilson, and Mrs. Wilson, at various times, authorized her brother to purchase $93,000.00 at maturity value of U. S. Savings Bonds, Series G, to be issued in his name payable to her at his death. The District of Columbia contended there had been a taxable transfer within the District of Columbia inheritance tax statute, and that such a finding is dictated by the Treasury Regulations concerning U. S. Bonds. The Court affirmed a judgment of the District of Columbia Tax Court holding that Mrs. Wilson was entitled to a refund of inheritance tax paid with respect to the $93,000.00 of U. S. Bonds assessed under the District of Columbia Statute. In its opinion the Court said:

"Certainly the legal title to the bonds in question stood in the name of the decedent at the time of his death, and Mrs. Wilson acquired it on his death. If we may look only at legal title, excluding the actual, equitable, or true ownership, it follows that there was a taxable transfer. But the principal is firmly established that taxation is concerned with real ownership rather than with refinements of title. * * *

"It (District of Columbia) relies on 31 Code Fed. Regs. 315.2 (Supp. 1945), which provides: '* * * The form of registration used must express the actual ownership of and interest in the bond and, except as otherwise specifically provided in the regulations in this part, will be considered as conclusive of such ownership and interest. * * *' We do not think, however, that this regulation is applicable as between the brother and sister here, Mrs. Wilson, and not decedent, had furnished the entire funds used to buy the bonds. And the terms of the letter authorizing the decedent to have the bonds issued in his name made it clear that he had the right only to take the income during his lifetime. Had the decedent cashed the bonds during Mrs. Wilson's lifetime, as presumably he could have done under the Treasury regulations, it seems clear that upon application the courts would have declared the proceeds to be held in trust for Mrs. Wilson. Cf. Harrington v. Emmerman, 1950, 88 U. S. App. D. C. 23, 186 F. 2d 757; National Metropolitan Bank of Washington v. Stoner, 1940, 85 U. S. App. D. C. 157, 177 F. 2d 37; Haliday v. Haliday, 1926, 56 App. D. C. 179, 11 F. 2d 565. The Treasury regulations would not have prevented such a decree. They do not purport to be concerned with such a situation. The regulations appear primarily designed to protect the Treasury as against adverse claimants in paying interest and principal of the bonds to the registered owner. The Treasury commonly has no concern with the funds or

their disposition once it has paid them to the registered owner. Its contract has then been fulfilled. In the present case, as in the case supposed, no breach of the regulations is produced. Indeed, where no purpose to defraud the Government has appeared, numerous courts have directed the registered owner to cash United States savings bonds and have ordered the proceeds paid to, and held in trust for, the true owner, notwithstanding the Treasury regulations. See Makinen v. George, 1943, 19 Wash. 2d 340, 142 P. 2d 910; Union Nat. Bank v. Jessell, 1948, 358 Mo. 467, 215 S. W. 2d 474; Katz v. Driscoll, 1948, 86 Cal. App. 2d 313, 194 P. 2d 822; In re Hendricksen's Estate, 1953, 156 Neb. 463, 56 N. W. 2d 711."

The facts in Tharp v. Besozzi, Ind. App., 144 N. E. 2d 430, (1957), in some respects, are quite similar to the facts here. The appellant, Thelma C. Tharp, and appellee's decedent, Arthur Morrison, were at one time husband and wife, and during the period of such relationship they acquired an equity in real estate, bank accounts, a postal savings account and a number of U. S. Savings Bonds, Series E, all of which property they held in their joint names with right of survivorship. The appellant filed suit for divorce against appellee's decedent 4 April 1946. While this suit was pending, the parties entered into a property settlement agreement, under the terms of which appellee's decedent received the U. S. Savings Bonds. The divorce was granted on 4 October 1946, but the court's decree neither incorporates the agreement, nor ratifies it by reference. Arthur Morrison died 15 November 1953, and the appellee was appointed administratrix *c. t. a.*, and as such she examined the contents of his safety deposit box, and found the U. S. Savings Bonds mentioned in the settlement agreement. The names of the payees had not been changed from the time of their original issue, and

are as follows: "Mrs. Thelma Morrison or Mr. Arthur Morrison; Mr. Arthur Morrison or Mrs. Thelma Morrison; Mr. Arthur J. Morrison or Mrs. Thelma C. Morrison.". The appellant, Thelma C. Tharp, contended that the Treasury Regulations under which the bonds were issued, and which are the terms of the contract between the United States and Arthur Morrison in his lifetime, bar the appellee from any recovery in the case. The Court after quoting the relevant parts of the Treasury Regulations under which the bonds were issued said:

"We have examined many cases from many jurisdictions and have found none in which the court has permitted a surviving co-owner to repudiate a bona fide agreement whereby she has surrendered her interest in bonds to her co-owner for a valuable consideration and upon the co-owner's death claimed the absolute ownership thereof for the sole reason that such deceased co-owner had not, during his lifetime, cashed the bonds or taken steps to have them reissued in his name alone. * * *

"Our research on the subject convinces us that as far as the United States is concerned the bonds in suit are the absolute property of the appellant and that no state court or legislature can compel the government to pay them to anyone else or to recognize anyone else's interest in them except as expressly provided by the regulations under which they were issued. See notes 140 A. L. R. 1435, 161 A. L. R. 170, 168 A. L. R. 245, and 173 A. L. R. 550. However, this is not a suit against the government for the payment of the bonds nor does it seek directly or indirectly to compel the government to recognize appellee's alleged interest in them. The judgment herein merely enjoins the appellant to surrender the bonds in controversy for cash in compliance with the Treasury regulations. After she has done that and the bonds

have been paid to her the government has fully and completely discharged its contract and can have no interest whatever in the conclusion of an Indiana court that the proceeds of such bonds, when received by the appellant, shall be impressed with a trust growing out of a contract with which the government had nothing to do and of which equity and fair dealing require performance."

In Roman v. Smith, Ark., 314 S. W. 2d 225, (1958), the Supreme Court of Arkansas held that where a property settlement in a divorce action between decedent and his former wife provided for delivery to wife of eighteen U. S. Savings Bonds in decedent's name but payable on death to wife, but in lieu of bonds cash was subsequently given to wife by decedent who neglected to cash bonds or have them reissued, upon decedent's death a constructive trust would be imposed on wife as to proceeds of bonds in favor of decedent's estate. In its opinion the Court said:

"Many cases from other jurisdictions have been examined, and no case has been found where the court permitted a surviving owner of United States Savings Bonds to repudiate a property settlement agreement or a contract of any nature under which a surrender of interest in bonds was made to the other owner for a valuable consideration, and upon the surviving owner's claim to the absolute ownership thereof for the sole reason that such deceased owner had not, during his lifetime, cashed the bonds or taken steps to have them reissued in his name alone. * * *

"In this case, appellee received all that she was to get under the property settlement agreement which was at least approved in part by the Chancery Court, and now she seeks to get a part of that property which was set aside to the appellants' decedent solely because he neglected to cash the bonds or have them reissued in his name alone during his

lifetime pursuant to the Treasury Regulations. Such a construction of the Treasury Regulations is not supported by the authorities, and certainly is contrary to the principles of equity and fair dealing.

"Insofar as the United States of America is concerned the bonds in suit are the absolute property of the appellee, and this Court cannot compel the Government to pay them to anyone else or to recognize the interest of anyone else in them except as expressly provided by the Treasury Regulations under which they were issued. See notes 140 A. L. R. 1435, 161 A. L. R. 170, 168 A. L. R. 245, and 173 A. L. R. 550. But this is not an action against the United States for the payment of the bonds in suit, nor is it a proceeding to compel the United States to recognize the appellants' interest in them. This suit merely seeks to compel the appellee to surrender the bonds in suit for cash in compliance with the Treasury Regulations. The United States will satisfy its obligations under the bonds by paying the proceeds in accordance with the terms of its contract to the named beneficiary—the appellee in this case, and there is nothing in the law or regulations which prevents this Court from declaring a constructive trust in the proceeds of the bonds in order to prevent flagrant and unfair dealings or even fraud. See Anderson v. Benson, supra; Chase v. Leiter, supra; Ibey v. Ibey, supra; Tharp v. Besozzi, supra; Union National Bank v. Jessell, supra. Since the federal regulations require that the bonds be cashed 'voluntarily,' the court cannot compel the appellee to cash the bonds. It should, however, enter a money judgment against the appellee for the value of the bonds, which will be surrendered to her upon satisfaction of the judgment."

In Silverman v. McGinnes, 259 F. 2d 731, (1958), where a decedent delivered Series E Savings Bonds, registered as

payable to himself and his former wife as co-owners or to himself and one or the other of his children as co-owners, to his wife stating that they were outright gifts to her and the children, and confirmed this by letter, the value of the bonds was held not includible in decedent's gross estate for estate tax purposes as an interest in property jointly held, even though Treasury Regulations purported to prohibit transfer of such bonds and decedent did not have bonds reissued in names of respective donees. The Court said in its opinion:

"The point is that with regard to payment by the issuer, the United States Government, the provisions of the contract including the regulations, govern. But the regulations do not apply to individual rights of persons who under the state law of property have become equitably entitled to the proceeds."

In Katz v. Driscoll, 86 Cal. App. 2d 313, 194 P. 2d 822, the Court said in respect to the Treasury Regulations concerning U. S. Savings Bonds:

"The purpose of the treasury regulations is to protect and hold the federal government immune from any attack on its performance of the contract as made in the bond. In other words, they are designed to prevent the implication of the government in any disputes concerning ownership of the bonds, protect it from any suits which might result from payment to a designated beneficiary or co-owner, and, for the purpose of promoting sales, guarantee the performance of the government in strict accord with the contract.

"These laws and regulations are not intended to confer on the beneficiary the right to retain permanently the proceeds from the bonds irrespective of fraud or any illegality in the manner in which the bonds were obtained. To hold otherwise would, in effect, say that the treasury regulations not only guarantee payment to the named beneficiary, but,

thereafter, when he receives the proceeds, follow him around indefinitely, and, like a protective halo, render him completely immune from any ordinarily legitimate claims thereto. For the purpose of payment and performance of the government's contract obligation, the beneficiary is recognized as the 'sole and absolute' owner. But 'the rights of survivorship, conferred by these (treasury) regulations upon a surviving co-owner or beneficiary' (315.13 (1),) terminate there."

According to the federal statutes and Treasury Regulations under which the Savings Bonds in suit were issued, Mrs. Mildred G. Tanner, the surviving co-owner, is the sole legal owner of these Savings Bonds, and no State Court can compel the Treasurer of the United States to pay them to anyone else or to recognize anyone else's interest in them, except as expressly provided by the Treasury Regulations under which they were issued. When the Treasurer of the Unitd States pays the proceeds of these bonds to Mrs. Tanner, the United States Government will have discharged its contractual obligations in respect to these bonds.

However, Mrs. Mildred G. Tanner in a deed and separation agreement between her and her husband, Ernest M. Tanner, relinquished, quitclaimed and conveyed for a valuable consideration all of her right, title and interest in these Savings Bonds to her husband, Ernest M. Tanner. Mildred G. Tanner and Ernest M. Tanner accepted and took into their respective possession the property granted them by the deed and separation agreement. Ernest M. Tanner died about five months later, with these bonds payable to "Mr. Ernest M. Tanner or Mrs. Mildred M. (sic) Tanner" in his possession. Upon such facts, the estate of Ernest M. Tanner is equitably entitled to the proceeds of these bonds. The United States Government is in no sense a party to this litigation, and can have no interest

in its result. As clearly stated by the authorities we have quoted above, the federal statutes and Treasury Regulations under which these bonds were issued do not apply to the rights of the estate of Ernest M. Tanner, which is the equitable owner of the proceeds of these bonds, when the proceeds of these bonds are paid by the Treasurer of the United States to Mrs. Mildred G. Tanner, and do not prevent this Court from declaring a resulting trust in the proceeds of the bonds in the hands of Mrs. Mildred G. Tanner, when she cashes them, for the benefit of the estate of Ernest M. Tanner, Annotation 51 A. L. R. 2d pp. 163-200, entitled "Imposition or declaration of constructive or resulting trust in United States Savings Bonds"; Henderson v. Bewley, (Ky.), 264 S. W. 2d 680, 51 A. L. R. 2d 159, *certiorari* denied 348 U. S. 926, 99 L. ed. 726; Anderson v. Benson, 117 F. Supp. 765; Union Nat. Bank v. Jessell, 358 Mo. 467, 215 S. W. 2d 474; Makinen v. George, 19 Wash. 2d 340, 142 P. 2d 910.

The Superior Court below is directed to enter a judgment that, according to the federal statutes and Treasury Regulations under which the Savings Bonds in suit were issued, Mrs. Mildred G. Tanner, the surviving co-owner, is vested with the sole legal ownership of these bonds and is the only person entitled to receive cash for them from the Treasurer of the United States, and ordering her to cash them, but when she receives payment of these Savings Bonds from the Treasurer of the United States, the proceeds from such bonds in her hands shall be impressed with a resulting trust for the benefit of the estate of defendant's testate, Ernest M. Tanner, and she shall deliver the proceeds obtained from cashing the bonds to the said executor in accordance with her conveyance of these bonds to Ernest M. Tanner during his lifetime for a valuable consideration, which trust grows out of the deed and separation agreement between her and her deceased hus-

band, Ernest M. Tanner, a deed and separation agreement with which the United States Government had nothing to do, and of which equity and fair dealing require performance.

There are no exceptions to the findings of fact by the Judge. Therefore, it will be presumed that they are supported by competent evidence, and are binding on appeal. Goldsboro v. R. R., 246 N. C. 101, 97 S. E. 2d 486; James v. Pretlow, 242 N. C. 102, 86 S. E. 2d 759. Neither the plaintiff nor the defendant requested the Judge to make any additional finding of fact, and excepted for failure of the Judge to do so. Plaintiff in her brief undertakes to discuss a question which is not supported by any assignment of error based on an exception. In a case like this, the Supreme Court is an appellate court, and it "has universally held that an assignment of error not supported by an exception is ineffectual." Barnette v. Woody, 242 N.C., 424, 88 S. E. 2d 223.

The findings of fact do not support the Judge's conclusion of law and judgment. Appellant's assignments of error are sustained. The judgment below is reversed.

The Judge's findings of fact are amply sufficient to sustain the judgment we have directed to be entered in the Superior Court.

Reversed and Remanded with Directions.

Rodman, J., dissenting: When the bonds in question were purchased, a contract was made with the Government which was binding on the parties. Ervin V. Conn, 225 NC 267; Watkins v. Shaw, 234 NC 96; Wright v. McMullan, 249 NC 591. Pertinent Federal regulations provide: "Savings bonds are not transferable and are payable only to the owners named thereon, except as specifically provided in the regulations in this part and then only in the manner and to the extent so provided." 31 CFR 315.15

"No judicial determination will be recognized which would give effect to an attempted voluntary transfer inter vivos of a bond or would defeat or impair the rights of survivorship conferred by these regulations upon a surviving co-owner of a savings bond, and all other provisions of this subpart are subject to this restriction." 31 CFR 315.20 .

The regulations contain ample and explicit provisions for surrender or reissue.

When the separation agreement was signed and plaintiff relinquished her legal right to the bonds, because she had furnished a part of the purchase price, she did not foreclose her right to receive the benefits of a contract which her husband might voluntarily maintain for her benefit.

There is no suggestion that plaintiff did anything to prevent her husband from exercising his right to terminate the contract which required payment to her on his death. The separation agreement surrendering plaintiff's legal right to surrender the bonds and receive payment was an incomplete inter vivos transfer which could have been completed at any time by deceased by a mere surrender of the bonds with a request for payment or reissue. He elected not to exercise his option to terminate plaintiff's contractual rights. Plaintiff's right to cash the bonds for her benefit was complete and became a vested right the moment her husband died. That right ought not to be defeated by mandate of this Court based upon some assumed equity. If we are to follow our own decisions and the majority of the courts of this country, the judgment should be affirmed. My vote is to that effect. If, however, the judgment is not affirmed on the facts found, defendant should not be adjudged the equitable owner and plaintiff a mere trustee until that intent of her deceased husband has been ascertained.

Plaintiff alleges in her pleadings her husband intended that she should receive the bonds or proceeds upon his death. To support her allegation she offered evidence tending to show that the affection engendered by more than a quarter of a century of married life did not terminate the moment the separation agreement was executed but continued until the death of the husband. She also offered evidence to show that her husband was informed of his right to surrender the bonds and the effect of his failure to do so.

The court excluded the evidence offered by plaintiff to establish the alleged intent of her husband to vest her with both legal and beneficial ownership of the funds. Some of the evidence offered was incompetent because of its source, but that was not true as to all the evidence; and the evidence was not excluded because of its source but because the court deemed it irrelevant and immaterial as the rights of the parties were fixed by the provisions of the bonds themselves.

The Court effectively disposes of the question of the intent of Ernest M. Tanner by this sentence: "Plaintiff in her brief undertakes to discuss a question which is not supported by any assignment of error based on an exception." Presumably the quoted sentence is directed to that portion of appellee's brief stating: "We agree with the trial court that the Appellee is entitled to the bonds as a matter of law and the intention of the decedent is not material. However, if we are found to be in error, we respectfully urge that the decision of the trial court should not be reversed, but the case should be sent back for a new trial in order that this evidence of the decedent's intentions may be considered and appropriate findings made."

Appellees are not expected to assign errors or take exceptions to judgments favorable to them. When, as here, the court has concluded that the facts found suffice for a judg-

ment establishing the plaintiff's ownership, plaintiff is not required to except to the failure to find additional facts to support the judgment in order to preserve his right to have the essential facts ascertained in accord with the evidence.

If the judgment is not affirmed on the facts found plaintiff is, in my opinion, entitled to have a jury ascertain the intent of deceased. Did he, as alleged by plaintiff, intend that she should in her own right and not as trustee collect the bonds? If such was in fact his intent, the mandate of this Court requiring her to forego that right is not in the furtherance of justice.

APPENDIX B

EXHIBIT B TO STIPULATION (SAVINGS BOND)

UNITED STATES SAVINGS BOND

The United States of America
Ten Years from the Issue Date Hereof Will Pay
ONE THOUSAND DOLLARS

To

Mr. Ernest M. Tanner
or
Mrs. Mildred M. Tanner
105 S. Tryon St.
Charlotte, N. C.

This bond is issued under authority of the Second Liberty Bond Act, as amended, and is subject to the terms and conditions stated on the back hereof. It will be valid only if duly inscribed and dated, and delivered by an authorized agent following receipt of payment therefor.

TREASURY DEPARTMENT
WASHINGTON

Henry Morgenthau, Jr.
Secretary of the Treasury

(on the back)

TERMS AND CONDITIONS

This bond is issued pursuant to Treasury Department Circular No. 653, Second Revision, and is subject to the terms and conditions thereof and the regulations prescribed thereunder as fully as if herein set forth. This bond is payable at face value ten years from issue date and may be redeemed at current redemption value, as shown in the table of redemption values hereon, at the option of the owner any time after sixty days from issue date, but only upon presentation and surrender of the bond with the request for pay-

ment duly executed in accordance with applicable regulation and the instructions hereon. This bond is not transferable; and, except as provided in said regulations, it is payable only to the registered owner. In case of the disability or death of the owner, or other contingency specified in the regulations, instructions should be requested from the Treasury Department or a federal reserve bank before the request for payment is executed. No person may hold United States Savings Bonds of Series E acquired on original issue in any one calendar year in excess of the amount fixed by regulation for that year.

(R. 19)

APPENDIX C

EXHIBIT C TO STIPULATION (SAVINGS BOND)

THE UNITED STATES OF AMERICA

FOR VALUE RECEIVED PROMISES TO PAY TO

Mr. Ernest M. Tanner, or
Mrs. Mildred M. Tanner
205 South Tryon St.
Charlotte, N. C.

ONE THOUSAND DOLLARS

without interest, ten years from the date as of which this bond is issued. This bond is redeemable at the option of the owner during any period after said issued date (but not within the first sixty days) in an amount equal to its redemption value during that period as shown by the following

(Table of Redemption Values).

This is a United States Savings Bond of Series E, authorized by the Second Liberty Bond Act, as amended, and issued pursuant to Treasury Department Circular No. 653, revised, dated June 1, 1942, to which reference is made for a statement of the rights of holders, as fully and with the same effect as though herein set forth.

This bond is not transferable, and, except as provided under said Circular, it is payable, at maturity or on earlier redemption, only to the registered owner and upon the presentation and surrender of this bond with the request for payment on the back hereof duly executed, all in accordance with the provisions of said Circular and the regulations prescribed from time to time thereunder.

This bond shall be valid only if inscribed with the owner's name and address, dated the first day of the month in whic

the issue price is received, and duly delivered by an authorized issuing agent. The amount of United States Savings Bonds of Series E of any designation, originally issued in any one calendar year to any one person, including bonds registered in his name alone or with another as co-owner, that may be held by that person at any one time shall not exceed $5,000 (maturity value).

TREASURY DEPARTMENT, WASHINGTON
Henry Morgenthau, Jr.
Secretary of the Treasury

NOT TRANSFERABLE

UNITED STATES WAR SAVINGS BOND
(R. 20)

APPENDIX D

EXHIBIT D TO STIPULATION

Sec. 315.4. Authorized forms of registration, Series E and H, and general provisions relating to their use.

(a) *Forms of registration.*—Except as provided in (4) hereof, bonds of Series E and H may be registered only in the names of individuals (natural persons), whether adults or minors, in their own right in one of the following forms:

(1) ONE PERSON: In the name of one person, for example: "John A. Jones."

(2) TWO PERSONS—CO-OWNERSHIP FORM: In the names of two (but not more than two) persons in the alternative as co-owners, for example: "John A. Jones OR Mrs. Ella S. Jones."

No other form of registration establishing co-ownership is authorized.

Subpart D—LIMITATION ON TRANSFER AND JUDICIAL PROCEEDINGS

Sec. 315.11. Not transferable.—Savings bonds are not transferable and are payable only to the owners named thereon, except in the case of the disability or death of the owner, authorized reissue, or as otherwise specifically provided in this Subpart, but in any event only in accordance with the provisions of these regulations. A savings bond may not be hypothecated or pledged as collateral for a loan or used as security for the performance of an obligation, except as provided in Section 315.12.

Sec. 315.12. Pledge with the Secretary of the Treasury or Federal Reserve Banks.—A savings bond may be pledged by the registered owner in lieu of surety under the provision

of the Department Circular No. 154, as amended, if the bond approving officer is the Secretary of the Treasury, in which case an irrevocable power of attorney shall be executed authorizing the Secretary of the Treasury to request payment. A savings bond may also be deposited as security with a Federal Reserve Bank under the Provisions of Department Circular No. 657 by an institution certified under that circular as an issuing agent for savings bonds of Series E.

Sec. 315.13. Judicial proceedings (judgment creditors, trustees in bankruptcy, receivers of insolvents' estates and conflicting claimants).—A claim against an owner or co-owner of a savings bond and conflicting claims as to ownership of or interest in such bond as between co-owners or the registered owner and a designated beneficiary, will be recognized when established by valid judicial proceedings and payment or reissue will be made, upon presentation and surrender of the bond, except as follows:

(1) No such proceedings will be recognized if they would give effect to an attempted voluntary transfer inter vivos of the bond or would defeat or impair the rights of survivorship conferred by these regulations upon a surviving co-owner or beneficiary.

(2) A judgment creditor, a trustee in bankruptcy or a receiver of an insolvent's estate will have the right to payment (but not to reissue) and a judgment creditor will be limited to payment at the redemption value current thirty days after the termination of the judicial proceedings or current at the time the bond is received, whichever is smaller.

(3) If a debtor, or bankrupt, or insolvent, is not the sole owner of the bond, payment will be made only to the extent of his interest therein, which must be determined by the court or otherwise validly established.

A divorce decree ratifying or confirming a property agreement between husband and wife or otherwise settling their respective interests in savings bonds, will be recognized and will not be regarded as a proceeding giving effect to an attempted voluntary transfer for the purpose of this section.

Subpart L—TWO NAMES—CO-OWNERSHIP FORM

Section 315.45. Payment or reissue.—A savings bond registered in the names of two persons as co-owners in the form, for example, "John A. Jones or Mrs. Mary C. Jones," will be paid or reissued as follows:

(a) Payment during the lives of both co-owners.—During the lives of both co-owners the bond will be paid to either co-owner upon his separate request without requiring the signature of the other co-owner; and upon payment to either co-owner the other person shall cease to have any interest in the bond. The bond will also be paid to both co-owners upon their joint request, in which case payment will be made by check drawn to the order of both co-owners in the form "John A. Jones and Mrs. Mary C. Jones," and the check must be endorsed by both payees.

(b) Reissue during the lives of both co-owners.—Except as otherwise specifically provided by these regulations, a bond held in co-ownership may be reissued during the lives of both co-owners only upon the request of both and under the following specific circumstances:

(1) in the name of either co-owner, alone, or with a new co-owner or with a beneficiary:

(i) if the co-owner whose name is to remain on the bond is related to the co-owner whose name is to be eliminated as co-owner either as husband or wife, parent or child, brother or sister, grandparent or grandchild, uncle or aunt,

or nephew or niece; the term "child" includes a child legally adopted as well as a stepchild; the terms "brother" and "sister"—include brothers and sisters of the whole blood, stepbrothers and stepsisters, and brothers and sisters through adoption, *Provided, however*, That the Treasury reserves the right to reject any application for reissue hereunder, in whole or in part, upon a determination that the transaction would tend to evade or defeat the purposes of the limitation on holdings or the restriction against the transferability of savings bonds;

(ii) if one of the co-owners is married after the issue of the bond; and

(iii) if the co-owners are divorced or legally separated from each other, or their marriage is annulled, after the issue of the bond.

Requests for reissue of any of the above three classes should be made on the current revision of Form PD 1938 and should be signed by both co-owners. Such requests will not be approved unless the co-owner whose name is to be eliminated from the bond is of full age and legally competent. A minor co-owner may execute the form if (in the opinion of the certifying officer) he is of sufficient competency and understanding to comprehend the nature of the transaction and reissue of all the bonds is to be made in the name of such minor alone or, if he so requests, with another co-owner or a beneficiary.

(2) If the bond is of Series F, G, J, or K, it may be reissued in the name of a trustee of a living trust created by both co-owners for the benefit of both, in whole or in part, during their lifetime whether or not containing an absolute power of revocation in the grantors. Requests for reissue under this provision should be made on Form PD 1851 and

will not be approved unless both co-owners are of full age and legally competent.

(c) Payment or reissue after the death of one co-owner.—If either co-owner dies without having presented and surrendered the bond for payment or authorized reissue, the surviving co-owner will be recognized as the sole and absolute owner of the bond and payment or reissue will be made only to such survivor, as though the bond were registered in his name alone. If the survivor requests reissue, he must present proof of the death of the other co-owner. If a co-owner dies after he has presented and surrendered the bond for payment, payment of the bond or check, if one has been issued, will be made to his estate (see Subpart M). If either co-owner dies after the bond has been presented and surrendered for authorized reissue, the bond will be treated as though such reissue had been made before the death of such co-owner (see Section 315.35).

(d) Payment or reissue on death of both co-owners in common disaster.—If both co-owners die in a common disaster under such conditions that it cannot be established, either by presumption of law or otherwise, which co-owner died first, the bond will be considered as belonging to the estates of both co-owners, and payment or reissue will be made accordingly (see Subpart N).

(e) Payment or reissue after the death of the surviving co-owner.—If a surviving co-owner who becomes solely entitled to the bond under the provisions of subsection (c) of this section, dies without having presented and surrendered the bond for payment or authorized reissue, the bond will be considered as belonging to his estate and will be paid or reissued accordingly (see Subpart N).

The term "presented and surrendered" as used in this Subpart means the actual receipt of a bond, for payment, by a Federal Reserve Bank or the Treasury Department, or an incorporated bank or trust company or any other agency duly qualified to make payment of the bond, or, for reissue, by a Federal Reserve Bank or the Treasury Department, with an appropriate request for the particular transaction. (R. 21)